CF0000059391

(2)

Division Bench (Cri...)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 1165 of 1996.

Puram son of Mehtaroo, aged about 35 years, cultivator and labourer, resident of gram- Bhakara..., P.S. Kurud, Tahsil Dhamtari, District- Raipur, M.P. at present in Dhamtari Jail .

APPELLANT

VERSUS

The State of M.P. --- RESPONDENT

APPEAL UNDER SECTION 374 (2) OF CR.P.C.

...filed 20/8/96. 1170h
...Shri A-Usman ...Advocate
R & D.P

A-F-R.

(56)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No.1405 of 1996

Puran, S/o Mehtaroo,
Aged about 35 years,
Cultivator and Labourer,
R/o Gram: Bhakhara,
Police Station: Kurud, Tehsil: Dhamtari,
District: Raipur (M.P.) (now C.G.)

- Versus -

State of M.P. (now Chhattisgarh)
Through: Station House Officer,
Police Station: Kurud, Tehsil: Dhamtari,
District: Raipur (M.P.) (now C.G.)

ORDER FOR CONSIDERATION

Sd/-
JUDGE
26-6-2004

HON'BLE THE CHIEF JUSTICE

I agree

Sd/-
Chief Justice

POST FOR ORDER ON 8TH JULY, 2004

Sd/-
L.C. Bhadoo
Judge

(57)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No.1405 of 1996

Puran, S/o Mehtaroo,
Aged about 35 years,
Cultivator and Labourer,
R/o Gram: Bhakhara,
Police Station: Kurud, Tehsil: Dhamtari,
District: Raipur (M.P.) (now C.G.)

- Versus -

State of M.P. (now Chhattisgarh)
Through: Station House Officer,
Police Station: Kurud, Tehsil: Dhamtari,
District: Raipur (M.P.) (now C.G.)

Present: -

Smt. Savita Tiwari, Advocate: For the appellant.

Shri Ashish Shukla, Govt. Advocate: For the State/respondent.

DIVISION BENCH: -

HON'BLE SHRI A.S.V. MOORTHY, C.J.

AND HON'BLE SHRI L.C. BHADOO, J.

JUDGMENT

(Delivered on 8th July, 2004)

The following judgment of the Court was delivered by *L.C. Bhadoo, J.*: -

1. The accused/appellant has preferred this appeal under Section 374 (2) of the Code of the Criminal Procedure, being aggrieved by the judgment dated 16th August, 1996, passed by the Additional Sessions Judge, Dhamtari, in Sessions Trial No.160/1994, whereby the learned Additional Sessions Judge after holding the accused/ appellant guilty under Section 302 of the I.P.C. for committing the murder of his own wife namely, Radhika Bai, sentenced him to undergo imprisonment for life and further to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year.

2. Briefly stated, the prosecution case is that in the intervening night of 1st & 2nd February, 1994, at about 11.30 p.m. the accused/ appellant along with his father Mehtaroo and Rama Nai went to the house of Kumar, brother in law of the accused/appellant, knocked his door, when he came out of the house, accused/appellant Puran informed him that his wife Radhika Bai (since deceased) was having illicit relations with one person, today he saw her with that person in a compromising position, but, that person ran away from his house, then he picked up a wooden handle of pickaxe and assaulted Radhika Bai on her head 5-6 times with that wooden handle. On receiving this information, Kumar along with the appellant, father of the appellant Mehtaroo and Rama Nai went to the Police out post Bhakhara and lodged the report vide Ex.P-1. Police came on the spot and sent Radhika Bai, for treatment to Dhamtari, where Dr. O.S. Bajpayee after giving her first aid treatment, looking to her serious condition, vide note Ex.P-14 referred her for further treatment to Medical College, Raipur. But, on the way Radhika Bai succumbed to the injuries sustained by her. Intimation to the effect was given to the Police Station: Dhamtari. The Police entered merg intimation (Ex.P-11) and in turn Police Station: Dhamtari, informed the concerned Police Station: Kurud where on the basis of Ex.P-11 the case was registered. The Investigating Officer after reaching on the spot prepared the Panchanama of the dead body of Radhika Bai vide Ex.P-9. Dr. Ramesh Kumar Tripathi conducted the post mortem on the body of Radhika Bai and prepared the report Ex.P-10. The Investigating Officer took into possession the shirt of accused Puran under recovery memo Ex.P-2. Under recovery memo Ex.P-3, he took into his possession the sari of deceased Radhika Bai from the house of the accused. Under Ex.P-4, the Investigating Officer took into possession the plain soil as well as the blood stained soil from the place of occurrence. He also took into possession one Lungi, one shirt in torn condition, one petty coat, and one blouse of the deceased vide Ex.P-5. Under Ex.P-6, the weapon of offence i.e. wooden handle of the pickaxe was also taken into possession from the house of the accused. The recovered articles were sent for examination by the Forensic Science Laboratory from where the blood stained articles were sent for

examination to the Serologist and after examination they sent reports Ex.P-19 & Ex.P-21. The Patwari prepared the site plan Ex.P-15 and the Investigating Officer prepared the site plan Ex.P-16.

3. After completion of the investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate, First Class, Dhamtari, who in turn committed the case to the Sessions Judge, Raipur, from where the Additional Sessions Judge, Dhamtari, received the case on transfer.

4. The learned Additional Sessions Judge after hearing the arguments on charge found that prima facie offence was made out against the accused/appellant for commission of offence under Section 302 of the I.P.C. Therefore, he framed the charge, read over and explained the same to the accused, which he denied and claimed for trial.

5. The prosecution in order to prove the offence against the accused/ appellant examined as many as 12 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he stated that the evidence of the prosecution witnesses is incorrect or said that he does not know. However, in the last, he stated that on the fateful day after taking his dinner at about 9.30 p.m., he went to watch video in the vicinity, when after watching the video, in between 10 p.m. and 11 p.m. he returned to his house, he saw that one person namely, Bauva, came out of his house and started running, he chased Buava, but Bauva took out a knife and threatened and ran away. He entered his house and after lighting the matchbox he saw that his wife was lying on the ground in injured condition, blood was oozing out of her head, then he asked his son Kuldeep to wake up and enquired from him. Kuldeep informed that Bauva came to their house, ravished and assaulted his mother. The accused further stated that he saw that the body of Radhika Bai was lying in naked condition. On this he informed his father. The accused/appellant also examined his father as defence witness.

6. The learned Additional Sessions Judge after hearing the arguments of the learned Additional Public Prosecutor and learned counsel for

(60)

the accused believed the prosecution evidence, convicted and sentenced the accused/appellant in the aforesaid manner.

7. We have heard Smt. Savita Tiwari, counsel for the appellant and Shri Ashish Shukla, Govt. Advocate for the State/respondent.

8. As far as the question of the nature of death of Radhika Bai being concerned as homicidal, it has not been disputed by the learned counsel for the accused/appellant. PW-5 Dr. Ramesh Kumar Tripathi has stated in his evidence that he conducted the post mortem on the dead body of Radhika Bai and noticed three injuries. There was one lacerated wound on the frontal region of head deep up to the brain and there were multiple fractures on the auxiliary bone on the right side and there was a fracture in the left parietal bone, membrane was congested, brain was congested, and throat and the windpipe were also congested. The cause of death of Radhika Bai was haemorrhage and shock. The doctor's report is Ex.P-10. Therefore, in view of the above evidence of the doctor, it is proved that the nature of death of Radhika Bai was homicidal.

9. Now, coming to the question of involvement of the accused/ appellant in committing the murder of Radhika Bai, there is no direct evidence in this case as PW-6 Kuldeep, son of the accused, who was said to be sleeping in the same room where the deceased was sleeping, saw the incident, but this witness has turned hostile and stated that the accused/appellant had not assaulted his mother, rather one person namely Bauva assaulted his mother with club. Therefore, the whole case rests on the circumstantial evidence.

10. In order to convict the accused/appellant on the basis of circumstantial evidence, the prosecution has to prove the offence as per the settled principles laid down by the Hon'ble Apex Court in the matter of **Nesar Ahmed vs. State of Bihar** reported in **AIR 2001 SUPREME COURT 2416** i.e. in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the

(61)

prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

11. The learned trial Court has relied on the following circumstances: -

a. that, the accused made extra judicial confession regarding the commission of murder of his own wife;
b. that, the blood stained clothes of the accused and the deceased were found stained with human blood of 'B' group;
c. that, the weapon of offence i.e. the wooden handle of pick-axe was recovered from the house of the accused; and
d. that, this is a house murder and that too in the night where only the accused and the deceased were residing.

Now, we shall proceed to examine the circumstantial evidence adduced by the prosecution in order to prove the offence against the accused/appellant and to see whether the prosecution has been able to prove the offence against the accused/appellant in conformity with the above principle.

12. As far as the question of extra judicial confession is concerned, Kumar, who lodged the F.I.R. before the Police Station, had mentioned in the F.I.R. that the accused confessed before him that he committed the murder of his own wife. Kumar has been examined by the prosecution as PW-1. This witness has turned hostile. He has not stated anywhere that the accused made extra judicial confession before him. On the contrary, he has supported the defence taken by the accused/appellant in his statement under Section 313 of the Cr.P.C. that the accused/appellant informed him that one person came out from his house and ran way, when he saw his wife after lighting the matchbox, she was lying smeared with blood. Similarly, the father of the accused has not been produced by the prosecution before whom the accused said to have made extra judicial confession, but he was produced by the accused/ appellant as DW-1. He has not stated that the accused/appellant had made any extra judicial confession before him. On the

(62)

contrary, he has also supported the case of the appellant that the accused/appellant informed him that when he returned to his house after watching video he saw that Bauva was coming out from his house and ran way.

13. Now, coming to the evidence of PW-11 Rama that extra judicial confession made before him, but he has also not supported the prosecution case. He has stated that Mehtaroo (DW-1), father of the accused/appellant came to him and informed that the accused/ appellant (his son) has murdered his wife. He has not stated anywhere that the accused himself made extra judicial confession before him. Therefore, his evidence that the father of the accused informed him that his son has murdered his wife does not fall in the category of extra judicial confession. Therefore, the finding of the learned trial Court that the extra judicial confession made before Rama (PW-11) is not correct.

14. Now, coming to the question that on the clothes of the accused and the deceased human blood of 'B' group was found, therefore, this circumstance connects the accused with the murder of his wife, in the first instance, if we look into the report of the Serologist (Ex.P-21) in which it has been mentioned that Article-30 (Lungi) marked as 'B'; Article-31 (shirt) marked as 'C'; Article-36 (sari) marked as 'H1'; and Article-37 (blouse) marked as 'H2' were stained with blood of Group-'B'. The Serologist's report shows that on the shirt (Article-32) marked as 'D', which was recovered from the body of the accused, blood was disintegrated and therefore, the origin could not be determined. Since, the group of blood, which was found on the shirt of accused, which was recovered under Ex.P-2, could not be determined, the accused cannot be connected on this circumstance with the murder of his wife. As far as other articles namely, shirt, Lungi, sari and blouse are concerned, they were taken into possession under seizure memos Ex.P-3 & Ex.P-5 and witnesses to this recovery memos are Hemnarayan Sahu, Nageshwar and Kumar. PW-1 Kumar has stated that under Ex.P-3 sari of the deceased was taken into possession. PW-8 Nageshwar has also stated that sari, blouse, Lungi and T-shirt were taken into possession under Ex.P-3

& Ex.P-5. Similar, are the statements of PW-2 Hemnarayan. Since these clothes were not recovered from the accused and recovered from the spot, therefore, the accused cannot be connected on the basis of this circumstance with the murder of his own wife. Even otherwise, if we take this circumstance, as it is that human blood of Group-'B' was found on these clothes, merely on this circumstance, the accused cannot be held guilty. As has been held by the Hon'ble Apex Court in the matter of **Namdeo Daulata Dhayagude and others v. State of Maharashtra** reported in **AIR 1977 SUPREME COURT 381**,

> "Recovery of clothes stained with human blood from accused – This cannot be regarded as conclusive evidence incriminating accused – It is a piece of evidence which may support other evidence about guilt of accused."

Similar view has been taken by the Hon'ble Apex Court in the matter of **Manish Dixit and others v. State of Rajasthan** reported in **2001 SUPREME COURT CASES (CRI) 235**. In this case also, the Hon'ble Apex Court held that

> "Bloodstain found on the motorcycle of the accused matching with the blood group of the deceased – Said circumstance, held, is not decisive enough to point to the involvement of the accused in the murder of the deceased."

Therefore, in the first instance, these clothes were not recovered from the accused and in the second place it has not come on record that what was the blood group of the deceased or the accused and it has also not come on record that at the time of arrest some injuries were found on the body of the accused which was suggestive of the fact that on account of the injuries, the clothes got stained with his blood.

15. Therefore, we are of the opinion that on the basis of this circumstance, the accused cannot be connected with the murder of his wife. As has been held by the Hon'ble Apex Court, if it is proved that the recovered article was stained with blood of the accused, even then, based only on that circumstance the accused cannot be convicted. That can be one circumstance and piece of evidence, which may support other evidence or circumstantial evidence, but

64

in this case, there is no other circumstantial evidence against the accused suggestive of his involvement in the murder of his wife. Therefore, this circumstance is also of no help to the prosecution.

16. As far as the circumstance that the (weapon of offence) wooden club was recovered under Ex.P-6 from the house of the accused is concerned, such wooden handles of pickaxe are normally found in every house and nothing was found on this article which suggests that the accused used this article as a weapon of offence. Therefore, through this circumstance also the prosecution has not been able to connect the accused with the murder of his wife.

17. As far as the circumstance that this was a house murder and that too in the night where only the accused and the deceased were residing is concerned, it is true that Radhika Bai was assaulted in her own house at about 10 p.m., but the accused in his statement under Section 313 of the Cr.P.C. has explained that after taking dinner at about 9 p.m. to 9.30 p.m. he went in the vicinity to watch video and when in between 10 p.m. and 11 p.m. he returned to his house after watching video, when he was entering his house he saw one person namely, Bauva coming out of his house, he chased Bauva, but Bauva ran away and therefore, he went in his house and on lighting the match box he saw that his wife was lying on the ground in injured condition and blood was oozing out of her head injuries. Same thing has been stated by his son Kuldeep (PW-6). Even the father of the accused (DW-1) has also stated so. He was informed by the accused that Bauva came to his house in his absence. Therefore, in view of the above, we are of the opinion that even though the deceased was assaulted in the night at 10 or 10.30, but in view of the explanation offered by the accused, there is no other circumstance established by the prosecution which is suggestive of the involvement of the accused in committing the murder of his own wife. Therefore, based only on this circumstance also the accused cannot be connected with the murder of his own wife.

18. As the circumstantial evidence is a very weak type of evidence, unless and until, as per the settled principle of law, the

(65)

circumstantial evidence is cogent, consistent and the chain of circumstances is complete which points that the accused is the only person responsible for crime and there is no even lurking doubt of committing the crime by some one else, then and then only the accused can be held guilty. But the prosecution has failed to prove the offence against the accused up to the test laid down by the Hon'ble Apex Court for convicting the accused based on the circumstantial evidence.

19. Therefore, in view of the above, we are of the opinion that the judgment of conviction and sentence cannot be sustained for the reasons mentioned above, as the finding of the trial Court holding the accused/appellant guilty for the commission of murder of his wife is not based on legal evidence. Hence, the finding cannot be sustained and it deserves to be set aside.

20. In the result, the appeal of the accused/appellant succeeds and the same is allowed. The conviction and sentence awarded under Section 302 of the I.P.C. on the accused/appellant are set aside and he is acquitted of the charge under Section 302 of the I.P.C. If the accused/appellant is not required in any other case, he be set at liberty forthwith.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Soma